DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CACR05-1266

September 20, 2006

THEODORE GIPSON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE ARKANSAS COUNTY CIRCUIT COURT
[NO. CR 2004-59]

HON. DAVID G. HENRY, CIRCUIT JUDGE

AFFIRMED

Theodore Gipson was convicted in an Arkansas County jury trial of commercial burglary and theft of property, for which he, as a habitual offender, received respective sentences of thirty years and forty years to be served consecutively in the Arkansas Department of Correction. On appeal he argues that his convictions should be reversed because the trial court erred in denying his motion to suppress evidence based on the illegality of his arrest. We affirm.

At Gipson's suppression hearing, DeWitt Police Department criminal investigator Jack Lock testified that while investigating a burglary of a Subway restaurant, he received a list of suspects, which he narrowed down to Gipson and Phynns Whiteside, who he knew were from Monroe County. He also was directed to search for a specific vehicle. Lock

contacted the Monroe County Sheriff's Department and the Brinkley Police Department and sought their help in locating the vehicle, sharing with them information he had regarding its likely location. In turn, Monroe County law enforcement told Lock who was driving the vehicle that he was searching for.

Lock and fellow DeWitt Police Officer Bobby Dumond searched for the vehicle in question in Brinkley, but they were unable to find it. Lock subsequently contacted the Clarendon Police Department, and an Officer Castleberry located the vehicle. Castleberry "watched" the vehicle, which was unoccupied, until Lock and Dumond arrived. At that point, Gipson came out from the back of a government housing building across the street from where the vehicle was parked and approached the officers. According to Lock, he told Gipson that he was investigating a burglary and, after advising him that he was not required by law to consent to the search, Lock asked if he could look inside the vehicle. Lock claimed that Gipson gave him permission to search. When he looked in the trunk, he discovered several pry bars, crowbars, bolt cutters, screwdrivers, and wire cutters. Lock noted that during the burglary, the back door of the Subway restaurant had been pried open and the phone lines to the business had been cut. Inside the vehicle, Lock found jersey gloves under the seats and "several thousand Subway stamps" that were reportedly stolen from the business's safe.

Officer Castleberry testified that Lock and Dumond asked him to assist in the burglary investigation. He confirmed that he located the vehicle that the DeWitt police were searching

for, notified Lock of his discovery, and remained with the vehicle throughout the investigation. He claimed that while they were preparing to contact Gipson at Wayne Miller's residence, Gipson came out the back door and came over to the vehicle. Castleberry confirmed that Lock told Gipson that he did not have to allow them to search the car without a warrant, and Gipson nonetheless consented. Officer Castleberry stated that he did not participate in the search of the vehicle, although he was present during the entire episode.

Gipson testified that he was alerted to the presence of police officers when someone telephoned Wayne Miller. He encountered Officer Castleberry, who told him that "someone" wanted to speak with him. According to Gipson, Lock walked up and hollered, "Gipson, do you remember me?" Lock immediately placed him under arrest. He stated that Lock told him that he had been caught by a "second surveillance camera." Gipson claimed that he asked one of the Clarendon police officers to give the keys to Miller so that he could take the car to his wife. Lock, however, seized the keys and, over Gipson's vocal protest, began to search his car. He emphatically denied giving consent to search, although he did admit that he was Mirandized. According to Gipson, he was placed in the back of the DeWitt police vehicle by Officer Dumond. Whiteside also testified, and he claimed that he heard Gipson refuse to allow police to search his car.

The trial judge, finding the situation analogous to *Logan v. State*, 264 Ark. 920, 576 S.W.2d 203 (1979), denied the suppression motion. He found, consistent with the holding

in *Logan*, that Clarendon Police Department officers were "present" during the arrest and that the "presence of an officer with full authority to make an arrest legitimizes an arrest."

Gipson argues on appeal that the "black-letter law in Arkansas" is that an arrest by local-law-enforcement officers operating outside of the territorial limits of the jurisdiction is invalid, unless it is specifically authorized by statute. He notes that the four statutory exceptions[1] are not present. Gipson concedes that in *Logan v. State, supra*, the supreme court created what appears to be an additional exception, that an officer may arrest outside his territorial jurisdiction when local law enforcement officers "participated" in the arrest. Nonetheless, he urges us to discount this authority because "the Court did not explain how it could create a way for a law enforcement officer to arrest an offender outside of his jurisdiction without being covered by an express statutory right to arrest." Gipson notes that the issue of unauthorized arrest was revisited in *Perry v. State,* 303 Ark. 100, 794 S.W.2d 141 (1990); *Henderson v. State*, 329 Ark. 526, 953 S.W.2d 26 (1997); and *Colston v. State*, 346 Ark. 503, 58 S.W.3d 375 (2001), and he urges us to find analogous the situations in

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[1] (1) when the officer is in fresh pursuit, Ark. Code Ann. § 16-81-301 (1987); (2) when the officer has a warrant for arrest, Ark. Code Ann. § 16-81-105 (1987); (3) when a local law enforcement agency has a written policy regulating officers acting outside its territorial jurisdiction and when the officer is requested to come into the foreign jurisdiction, Ark. Code Ann.§ 16-81-106(c)(3)-(4) (Supp. 1995); and (4) when a sheriff in a contiguous county requests an officer to come into his county to investigate and make arrests for violations of drug laws, Ark. Code Ann. § 5-64-705 (Repl. 1993).

Perry v. State, 303 Ark. 100, 794 S.W.2d 141 (1990).

Perry and *Henderson*, and accept the reasoning contained in the dissent in *Colston*. We believe Gipson's reliance on these authorities is misplaced.

We, however, are not free to disregard *Logan*. Furthermore, we believe that *Logan* is factually directly on point. In both *Logan* and in the instant case, a local law enforcement officer, who was acting within his territorial jurisdiction, "participated" in the arrest. In this regard, the instant case is clearly distinguishable from the other authorities that Gipson has proffered.

In *Perry v. State, supra*, a Searcy police officer "detained" a suspected intoxicated driver outside of the city limits in a manner that constituted an arrest and subsequently called for a White County deputy sheriff to legitimize his actions. Here, Clarendon police officers were present at every step of the investigation that took place within their jurisdiction, and they fully participated in the arrest.

In *Henderson v. State, supra*, the supreme court found unlawful an arrest where a Pulaski County deputy sheriff, who had been deputized as an F.B.I. special agent and U.S. Marshal, arrested a suspect in Lonoke County. In that case, even though the F.B.I. had provided some assistance, the supreme court noted that:

> at the time of Henderson's arrest, three things are certain: (1) no federal offense was involved; (2) Detective Bush was not involved in a MetRock[2] operation; and (3) Detective Bush was not given explicit permission by Special F.B.I. Agent Peatross to effect an arrest. While we can infer that he "participated" in the arrest under the reasoning of *Logan v. State, supra*, absent a federal crime or specific authority from his F.B.I. supervisor to make

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> the arrest, Detective Bush had no authority to arrest Henderson for a state crime in Lonoke County.

329 Ark. at 534, 953 S.W.2d at 30. Here, the Clarendon police officers were unquestionably acting within their territorial jurisdiction, and the level of participation was clearly of a more substantial nature than that of the F.B.I. in *Henderson*.

Finally, *Colston v. State, supra*, was a plurality decision, and it did not overrule *Logan v. State, supra*. Furthermore, in *State v. Fountain*, 350 Ark. 437, 88 S.W.3d 411 (2002), our supreme court declined to follow *Colston*, and reaffirmed the validity of *Logan.* It is axiomatic that we are bound by the decisions of our supreme court. *See, e.g., Davis v. State*, 60 Ark. App. 179, 962 S.W.2d 815 (1998). Moreover, the instant case is even more factually analogous to *Logan v. State*, *supra* than *Colston v. State, supra*, in that testimony by the arresting officer in *Colston* indicated that the local law enforcement "did not do anything," whereas in the instant case, the Clarendon police located the subject vehicle and Gipson himself. Accordingly, local law enforcement was clearly "present" and "participated in making the arrest."

Affirmed.

VAUGHT and NEAL, JJ., agree.